

DRAFT: May 15, 1995

AGREEMENT AND PLAN OF REORGANIZATION

THIS AGREEMENT AND PLAN OF REORGANIZATION (the "Agreement") is entered into as of May __, 1995, by and among America Online, Inc., a Delaware corporation ("AOL"), AOL Acquisition Corp., a California corporation and wholly-owned subsidiary of AOL ("Sub"), and Wide Area Information Servers, Inc., a California corporation ("WAIS").

RECITALS

A. The parties intend that, subject to the terms and conditions hereinafter set forth, Sub will merge with and into WAIS in a statutory merger or consolidation (the "Merger"), with WAIS to be the surviving corporation, pursuant to the terms and conditions set forth herein, and pursuant to an Agreement of Merger substantially in the form of Exhibit A (the "Agreement of Merger") and the applicable provisions of the laws of the State of California. Upon the Merger, all outstanding capital stock of WAIS will be converted into Common Stock of AOL, in the manner and on the basis determined herein and as provided in the Agreement of Merger.

B. The Merger is intended to be treated as (i) a tax-free reorganization pursuant to the provisions of Section 368(a)(1)(A) of the Internal Revenue Code of 1986, as amended (the "Code"), by virtue of the provisions of Section 368 (a)(2)(E) of the Code and (ii) a "pooling of interests" for accounting purposes.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. PLAN OF REORGANIZATION

1.1 The Merger. The Agreement of Merger will be filed with the Secretary of State of the State of California as soon as practicable after WAIS Shareholder approval is obtained as described in Section 4.4 hereof. The effective time of the Merger as specified in the Agreement of Merger (the "Effective Time") is expected to occur on May __, 1995. Subject to the terms and conditions of this Agreement, Sub will be merged with and into WAIS in a statutory merger or consolidation pursuant to the Agreement of Merger and in accordance with applicable provisions of California law as follows:

1.1.1 Conversion of Shares. Unless there is an adjustment to the shares to be issued in the Merger pursuant to Section 1.1.4 below, each share of WAIS Common Stock ("WAIS Common Stock" or "WAIS Stock"), that is issued and outstanding immediately prior to the Effective Time and that does not dissent pursuant to Section 1.1.5 hereof, will, by virtue of the Merger and at the Effective Time, and without further action on the part of any holder thereof, be converted into such number of fully paid and nonassessable shares of AOL Common Stock, \$0.01 par value per share ("AOL Common Stock") as shall be determined under the following formulas:

of WAIS pursuant to its 1994 Stock Plan. There are outstanding options to purchase a total of 1,908,000 shares of WAIS's Common Stock, of which 591,375 shares of WAIS Common Stock are issuable pursuant to options that will be vested on or prior to March 31, 1995. Section 2.3 to the WAIS Schedules sets forth a true and correct list of all holders of WAIS Common Stock and options for WAIS Common Stock and the number of such shares and options held by each holder. Except as set forth in Section 2.3 to the WAIS Schedules, there are no options, warrants, conversion privileges or preemptive or other rights or agreements outstanding to purchase or otherwise acquire any of WAIS's authorized but unissued capital stock, and there is no liability for dividends accrued but unpaid. Except as set forth in Section 2.3 to the WAIS Schedules, there are no voting agreements, rights of first refusal or other restrictions (other than normal restrictions on transfer under applicable federal and state securities laws) applicable to any of WAIS's outstanding securities.

2.4 Subsidiaries. WAIS does not have any subsidiaries or any equity interest, direct or indirect, in any corporation, partnership, joint venture or other business entity.

2.5 No Violation of Existing Agreements. Neither the execution nor delivery of this Agreement nor any of the WAIS Ancillary Agreements, nor the consummation of the transactions contemplated hereby or thereby, will conflict with, or (with or without notice or lapse of time, or both) result in a termination, breach, impairment or violation of, or cause an acceleration or amendment of any obligation under, (a) any provision of the Articles of Incorporation or Bylaws of WAIS, as currently in effect, (b) in any material respect, any instrument or contract to which WAIS is a party or by which WAIS or its assets are bound, or (c) any federal, state, local or foreign judgment, writ, decree, order, statute, or regulation applicable to WAIS. Except as set forth in Section 2.5 to the WAIS Schedules, the consummation of the Merger in and of itself will not require the consent of any third party and will not have a material adverse effect upon any rights, licenses, franchises, leases or agreements of WAIS pursuant to the terms of those agreements.

2.6 Litigation. There is no action, proceeding, claim or investigation pending against WAIS before any federal, state, municipal, foreign or other court or administrative agency, department, board or instrumentality, and, to the best of the knowledge of WAIS, no such action, proceeding, claim or investigation has been threatened. There is no substantial basis for any shareholder or former shareholder of WAIS, or any other person, firm, corporation or entity, to assert a claim against WAIS, Sub or AOL based upon: (a) ownership or rights to ownership of any securities of WAIS Stock, (b) any rights as or to become a holder of securities of WAIS, including any option or preemptive rights or rights to notice or to vote, or (c) any rights under any agreement between WAIS and any of its shareholders or former shareholders or option holders or former option holders in their capacity as such.

2.7 WAIS Financial Statements. WAIS has delivered to AOL as Section 2.7 to the WAIS Schedules WAIS's unaudited balance sheet as of ~~December~~ March 31, ~~1994~~ 1995 (the "Balance Sheet Date"), its unaudited income statement for the month ended ~~December~~ March 31, ~~1994~~ 1995, and its unaudited balance sheets and unaudited income statements for the three months ended December 31, 1994; September 30, 1994; June 30, 1994; March 31, 1994; December 31, 1993; September 30, 1993; June 30, 1993; March 31, 1993 and September 30,

1992 (collectively, the "WAIS Financial Statements"). The WAIS Financial Statements (a) are in accordance with the books and records of WAIS, (b) fairly present the financial condition of WAIS at the respective dates therein indicated and the results of operations for the respective periods therein specified, and (c) have been prepared in accordance with generally accepted accounting principles applied on a consistent basis. As of the Balance Sheet Date, WAIS had no material debt, liability or obligation of any nature, whether accrued, absolute, contingent or otherwise, and whether due or to become due, that was not reflected, reserved against or disclosed in the WAIS Financial Statements, except for those that are not required to be reported in accordance with generally accepted accounting principles.

2.8 Taxes. All federal, state, local and foreign tax and information returns of WAIS due prior to the Effective Time (after giving effect to any extensions of such due date) have been or will be filed when due (including any extensions of such due date), and all amounts shown as due thereon on or before the Effective Time of the Merger have been or will be paid on or before such due date. Complete duplicate copies of all such tax and information returns have been provided or made available by WAIS to AOL. WAIS is not delinquent in the filing of any tax returns, and no deficiencies for any tax have been threatened, claimed, proposed or assessed which have not been settled or paid. No tax return of WAIS has ever been audited by the Internal Revenue Service. No tax return of WAIS is currently under examination by any taxing authority nor is WAIS on notice that any such examination is threatened or forthcoming. The ~~December~~ March 31, ~~1994~~ 1995 unaudited balance sheet (the "WAIS ~~1994~~ 1995 Balance Sheet") that comprises a part of the WAIS Financial Statements (i) fully accrues all actual and contingent liabilities for Taxes with respect to all periods through ~~December~~ March 31, ~~1994~~ 1995 and WAIS will not incur any Tax liability in excess of the amount reflected on the WAIS ~~1994~~ 1995 Balance Sheet with respect to such periods, and (ii) properly accrues in accordance with GAAP all liabilities for Taxes payable after ~~December~~ March 31, ~~1994~~ 1995 with respect to all transactions and events occurring on or prior to such date. For the purposes of this Section, the terms "tax" and "taxes" include all federal, state, local and foreign income, gains, franchise, excise, property, sales, use, employment, license, payroll, occupation, recording, value added or transfer taxes, governmental charges, fees, levies or assessments (whether payable directly or by withholding), and, with respect to such taxes, any estimated tax, interest and penalties or additions to tax and interest on such penalties and additions to tax. For the purposes of this Section, an accrual or reserve for taxes will not be deemed to cover penalties for tax filing deficiencies unless the portion of such accrual or reserve attributable to interest or penalties is expressly identified as such.

2.9 Title to Properties. WAIS has good and marketable title to all of its assets as shown on the balance sheet as of the Balance Sheet Date included in the WAIS Financial Statements, free and clear of all liens, charges or encumbrances, other than for taxes not yet due and payable or as otherwise listed on Section 2.9 to the WAIS Schedules. The machinery and equipment included in such properties are in all material respects in good condition and repair, normal wear and tear excepted, and all leases of real or material personal property to which WAIS is a party are fully effective and afford WAIS peaceful and undisturbed possession of the subject matter of the lease. WAIS is not in violation of any zoning, building, safety or environmental ordinance, regulation or requirement or other law or regulation applicable to the operation of owned or leased properties (the violation of which would have a Material Adverse

Effect), and WAIS has not received any notice of such violation with which it has not complied or had waived.

2.10 Absence of Certain Changes. Except as contemplated by this transaction or as set forth in Section 2.10 to the WAIS Schedules, since the Balance Sheet Date there has not been with respect to WAIS:

(a) any change in the financial condition, properties, assets, liabilities, business or operations of WAIS which change by itself or in conjunction with all other such changes, whether or not arising in the ordinary course of business, has had, or will have, a Material Adverse Effect on WAIS;

(b) any contingent liability incurred by WAIS as guarantor or surety with respect to the obligations of others, which contingent liability is in excess of \$10,000, individually, or \$25,000 in the aggregate;

(c) any mortgage, encumbrance or lien placed on any of the properties of WAIS other than in the ordinary course of business (provided that such mortgage, encumbrance or lien in the ordinary course is not in excess of \$10,000, individually, or \$25,000 in the aggregate);

~~(d) any material obligation or liability incurred by WAIS;~~

~~(e)~~(d) any purchase or sale or other disposition, or any agreement or other arrangement for the purchase, sale or other disposition, of any of the properties or assets of WAIS other than in the ordinary course of business or in amounts less than \$50,000 in the aggregate;

~~(f)~~(e) any damage, destruction or loss, whether or not covered by insurance, which has a Material Adverse Effect;

~~(g)~~(f) any declaration, setting aside or payment of any dividend on, or the making of any other distribution in respect of, the capital stock of WAIS, any split, combination or recapitalization of the capital stock of WAIS or any direct or indirect redemption, purchase or other acquisition of the capital stock of WAIS (other than the issuance of shares of WAIS Common Stock upon exercise of Current WAIS Options);

~~(h)~~(g) any labor dispute or claim of unfair labor practices which has a Material Adverse Effect, any change in the compensation payable or to become payable to any of WAIS's officers, employees or agents earning compensation at an anticipated annual rate in excess of \$60,000, or any bonus payment or arrangement made to or with any of such officers, employees or agents; or any change in the compensation payable or to become payable to any of WAIS's other officers, employees or agents other than normal annual raises in accordance with past practice and disclosed to AOL in writing or any bonus payment or arrangement made to or with any of such officers, employees or agents other than normal bonuses or arrangements made in accordance with past practices and disclosed to AOL in writing;

(+)(h) any payment or discharge of a material lien or liability thereof, which lien or liability was not either (i) shown on the balance sheet as the Balance Sheet Date included in the WAIS Financial Statements; (ii) discharged in accordance with the terms of any contractual obligations existing on the date hereof and disclosed to AOL on the WAIS Schedules; or (iii) incurred in the ordinary course of business after the Balance Sheet Date; or

(+)(i) any obligation or material liability incurred by WAIS to any of its officers, directors or shareholders, or any loans or advances made to any of its officers, directors or shareholders except normal compensation, commissions, bonuses and expense allowances payable to officers consistent with past practice or consistent with WAIS contractual obligations elsewhere described in the WAIS Schedules.

Since December 31, 1994, WAIS has not entered into any Government Contracts (as defined in Section 2.22 hereof) and has submitted no invoice or other claim for payment in connection with any Government Contract.

2.11 Agreements and Commitments. Except as set forth in Section 2.11 to the WAIS Schedules or as listed in Section 2.12, Section 2.15.3 or Section 2.15.6, respectively, to the WAIS Schedules, as required by Section 2.12, Section 2.15.3 or Section 2.15.6, as the case may be, WAIS is not a party or subject to any oral or written executory agreement, obligation or commitment which is described below:

(a) (i) Contract, commitment, letter contract or purchase order providing for payments by WAIS in an amount of (1) \$35,000 or more in the ordinary course of business to any one vendor; or (2) \$20,000 or more not in the ordinary course of business to any one vendor; or (ii) quotation, bid or proposal providing for payments by WAIS in an amount of (1) \$35,000 or more in the ordinary course of business to any one vendor; or (2) \$20,000 or more not in the ordinary course of business;

(b) License agreement as licensor or licensee (except in cases where WAIS is a licensor or a licensee for standard (except for immaterial deviations) non-exclusive software licenses granted to end-user customers in the ordinary course of business, the forms of which have been provided or made available to AOL), but in all events including site licenses for products and each agreement that provides for either the delivery of source code to the licensee or escrow of such source code for the benefit of such licensee;

(c) Agreement by WAIS to encumber, transfer or sell rights in or with respect to any WAIS Intellectual Property (as defined in Section 2.12 hereof) (except in cases where WAIS is a licensor for standard (except for immaterial deviations) non-exclusive software licenses granted to end-user customers in the ordinary course of business, the forms of which have been provided or made available to AOL's counsel);

(d) Agreement for the sale or lease of real or tangible personal property involving more than \$25,000 per year;

Section 13(a) or 15(d) of the 1934 Act since the filing of the most recent quarterly report on Form 10-Q, including but not limited to its report on Form 8-K filed on March 9, 1995 with respect to the restated consolidated financial statements for the year ended June 30, 1994, reflecting the August 19, 1994 pooling of interests with Redgate Communications Corporation (the "AOL Disclosure Package"). All documents contained in the AOL Disclosure Package and filed with the SEC set forth a true and accurate description of the capital stock of AOL as of the date filed. None of the written information supplied or to be supplied by AOL for inclusion in the AOL Disclosure Package, this Agreement, the exhibits and schedules hereto, and any certificates or documents to be delivered to WAIS pursuant to this Agreement, at the date such information is supplied and at the time of the meeting of the WAIS shareholders to be held to approve the Merger, when taken together, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary in order to make the statements contained herein and therein, in light of the circumstances under which such statements were made, not misleading.

4. WAIS PRECLOSING COVENANTS

During the period from the date of this Agreement until the earlier of the Effective Time or the termination of this Agreement pursuant to Section 9 hereof, except as otherwise stipulated by AOL or Sub, WAIS covenants and agrees as follows:

4.1 Advice of Changes. WAIS will promptly advise AOL in writing (a) of any event occurring subsequent to the date of this Agreement that would render any representation or warranty of WAIS contained in this Agreement, if made on or as of the date of such event or the Closing Date, untrue or inaccurate in any material respect and (b) of any change in WAIS's business, results of operations or financial condition that could be reasonably expected to have a Material Adverse Effect. To ensure compliance with this Section 4.1, WAIS shall deliver to AOL within 20 days after the end of each monthly accounting period ending after the date of this Agreement and before the Closing Date, an unaudited balance sheet and statement of operations, which financial statements shall be prepared in the ordinary course of business, in accordance with WAIS's books and records and consistent with past practices and shall fairly present the financial position of WAIS as of their respective dates and the results of WAIS's operations for the periods then ended.

4.2 Maintenance of Business. WAIS will use its best efforts to carry on and preserve its business and its relationships with customers, suppliers, employees and others in substantially the same manner as it has prior to the date hereof and consistent with the "WAIS Inc. Power Publishing" business plan previously delivered to AOL (the "Business Plan"). If WAIS becomes aware of a material deterioration in the relationship with any material customer, supplier or key employee, it will promptly bring such information to the attention of AOL in writing and, if requested by AOL, will exert all best efforts to restore the relationship.

4.3 Conduct of Business. WAIS will continue to conduct its business and maintain its business relationships in the ordinary and usual course consistent with the Business Plan, and WAIS will not, without the prior written consent of the Chief Financial Officer or Senior Vice President of AOL, not to be unreasonably withheld or delayed:

(a) borrow any money except under existing lines of credit or other existing credit arrangements and consistent with past borrowing practices or as set forth on Section 4.3 to the WAIS Schedules;

(b) enter into any transaction not in the ordinary course of business or enter into any transaction or make any commitment involving an expense or capital expenditure in excess of \$50,000 (other than end-user licenses pursuant to WAIS's standard end-user license agreement and the incurring of up to \$75,000 of reasonable legal and accounting fees and disbursements in connection with the transactions contemplated by this Agreement);

(c) encumber or permit to be encumbered any of its assets except in the ordinary course of its business consistent with past practice and if such encumbrance would not have a Material Adverse Effect;

(d) dispose of any of its material assets except in the ordinary course of business consistent with past practice;

(e) enter into any material lease or contract for the purchase or sale of any property, real or personal, tangible or intangible, except in the ordinary course of business consistent with past practice;

(f) fail to take best efforts to maintain its equipment and other assets in good working condition and repair according to the standards it has maintained to the date of this Agreement, subject only to ordinary wear and tear;

(g) terminate any management, supervisory, development or other key personnel of WAIS; or except as set forth on Section 4.3 to the WAIS Schedules, pay any bonus, royalty, increased salary or special remuneration to any officer, employee or consultant in excess of the lesser of \$6,000 or 10% of such individual's annual compensation for 1994, or \$50,000 in the aggregate for all such individuals (except pursuant to existing arrangements previously disclosed to AOL in writing); or ~~except as set forth on Section 4.3 to the WAIS Schedules~~ enter into any new employment or consulting agreement with any such person, or enter into any agreement or plan of the type described in Section 2.15;

(h) change accounting methods, other than changes required by the Financial Accounting Standards Board or other body of similar authority in rules or pronouncements to be adopted or issued after the signing of this Agreement;

(i) declare, set aside or pay any cash or stock dividend or other distribution in respect of capital stock, or redeem or otherwise acquire any of its capital stock;

(j) amend or terminate any contract, agreement or license to which it is a party (except pursuant to arrangements previously disclosed to AOL in writing) except those amended or terminated in the ordinary course of business, consistent with past practice, and which are not material in amount or effect;

(k) lend any amount to any person or entity, other than advances for travel and expenses incurred in the ordinary course of business;

(l) guarantee or act as a surety for any obligation except for the endorsement of checks and other negotiable instruments in the ordinary course of business;

(m) waive or release any material right or claim except in the ordinary course of business;

(n) issue or sell any shares of its capital stock of any class (except upon exercise of Current WAIS Options), or any other of its securities, or issue or create any warrants, obligations, subscriptions, options, convertible securities or other commitments to issue shares of capital stock, or accelerate the vesting of any outstanding option or other security except as may be required by the terms of such options or securities;

(o) split or combine the outstanding shares of its capital stock of any class or enter into any recapitalization affecting the number of outstanding shares of its capital stock of any class or affecting any other of its securities;

(p) merge, consolidate or reorganize with, or acquire any entity other than Sub;

(q) amend its Articles of Incorporation or Bylaws;

(r) agree to any audit assessment by any tax authority or file any federal or state income or franchise tax return unless copies of such returns have been delivered to AOL for its review prior to filing;

(s) license any of its technology or any WAIS Intellectual Property, except in the ordinary course of business consistent with past practice;

(t) **enter into, amend or terminate any Government Contract or submit any invoice or other claim for payment in connection with any Government Contract;**

(u) change any insurance coverage;

(u)(v) terminate the employment of any key employee listed in Section 2.15.2 of the WAIS Schedules; or

(v)(w) agree to do any of the things described in the preceding clauses 4.3(a) through 4.3(u) **4.3(v)**.

4.4 Shareholder Approval. Unless such shareholder approval is to be obtained by written consent, WAIS will promptly and duly call a special meeting of its shareholders to be held at least seven (7) business days prior to the Effective Time, to submit this Agreement, the Agreement of Merger and related matters for the consideration and approval of the WAIS

which will be registered on the S-8 to be filed within thirty (30) days after the Closing Date), in each case with an exercise price equal to the closing price per share of AOL Common Stock as quoted on the Nasdaq National Market and as reported in the Wall Street Journal on the trading day immediately prior to the Closing Date.

7. CONDITIONS TO OBLIGATIONS OF WAIS

WAIS's obligations hereunder are subject to the fulfillment or satisfaction, on and as of the Closing, of each of the following conditions (any one or more of which may be waived by WAIS, but only in a writing signed by WAIS):

7.1 Accuracy of Representations and Warranties. The representations and warranties of AOL and Sub set forth in Section 3 shall be true and accurate in every material respect on and as of the Closing with the same force and effect as if they had been made at the Closing, and WAIS shall receive certificates to such effect executed by AOL's and Sub's respective Chief Financial Officers. Notwithstanding the above, AOL and WAIS agree that, if the breaches in the representations and warranties of AOL set forth in Section 3 would not, in the aggregate, result in a material adverse effect on AOL, WAIS will waive this condition to closing.

7.2 Covenants. Each of AOL and Sub shall have performed and complied in all material respects with all of their respective preclosing covenants contained in Section 5.1 on or before the Closing, and WAIS shall receive certificates to such effect signed by AOL's and Sub's respective Chief Financial Officers.

7.3 Compliance with Law. There shall be no substantial law, regulation, order, decree, or ruling by any court or governmental agency or written threat thereof, which would prohibit or render illegal the transactions contemplated by this Agreement.

7.4 Government Consents. There shall have been taken such other action, as may be required to consummate the Merger by any regulatory authority having jurisdiction over the parties and the actions herein proposed to be taken, including but not limited to any additional requirements under applicable federal and state securities laws.

7.5 Documents. WAIS shall have received all written consents, assignments, waivers, authorizations or other certificates reasonably deemed necessary by their legal counsel to consummate the transactions contemplated hereby.

7.6 Shareholder Approval. The principal terms of this Agreement and the Agreement of Merger shall have been approved and adopted as required by applicable law and WAIS's Articles of Incorporation and Bylaws.

7.7 Opinion of Counsel. WAIS shall have received from (i) Fenwick & West, counsel to AOL (with respect to Sub) ~~and/or~~ and (ii) Fenwick & West or AOL's in-house counsel (with respect to AOL), opinions in customary form reasonably acceptable to WAIS and its counsel.

9.1.2 Unless otherwise specifically provided herein or agreed by the parties hereto, this Agreement will be terminated if all conditions to the Closing have not been or cannot reasonably be satisfied or waived on or before May __, 1995 unless the Closing has been extended by the parties.

9.2 At the Closing. At the Closing, this Agreement may be terminated and abandoned:

9.2.1 By AOL if any of the conditions precedent to AOL's and Sub's obligations set forth in Section 8 above have not been fulfilled or waived at and as of the Closing; or

9.2.2 By WAIS if any of the conditions precedent to WAIS's obligations set forth in Section 7 above have not been fulfilled or waived at and as of the Closing. Any termination of this Agreement under this Section 9.2 will (i) be effective upon the delivery of notice of the terminating party to the other party hereto, except as provided below and (ii) will not result in liability for either party to the other.

9.3 No-Shop Provision; Break Up Fee. WAIS agrees that, from the date hereof until the Closing Date or the earlier mutual abandonment of the transactions contemplated by this Agreement (the "No-Shop Period"), WAIS and Mr. Brewster Kahle will not, and will not authorize any officer or director of WAIS or any other person on its behalf to, solicit, encourage, negotiate or accept any offer from any party concerning: (i) the possible disposition of all or any substantial portion of WAIS's business, assets or capital stock by merger, sale or any other means or any other transaction that would involve a change in control of WAIS; or (ii) the sale of any equity or debt securities of WAIS. WAIS will promptly notify AOL in writing of any such inquiries or proposals. If WAIS merges with, or WAIS or its assets are acquired by, a company other than AOL or a wholly-owned subsidiary of AOL during a period of one year after ~~the date hereof~~ March 17, 1995 and if discussions with such company concerning such acquisition occur during the No-Shop Period, WAIS (or the acquiring company) will immediately pay AOL the sum of \$3,000,000 and AOL will make no other claims against WAIS or its shareholders regarding the transactions contemplated by this Agreement. WAIS shall have no obligations under this Section if AOL decides at its sole discretion not to proceed with the transactions contemplated by this Agreement or causes such transactions not to occur (other than as a result of WAIS's breach of this Agreement or intentional failure to cause a condition of Closing to occur).

9.4 Certain Continuing Obligations. Following any termination of this Agreement pursuant to this Section 9, the parties hereto will continue to perform their respective obligations under Section 9.3 and Section 11 but will not be required to continue to perform their other covenants under this Agreement.

10. SURVIVAL OF REPRESENTATIONS, INDEMNIFICATION AND REMEDIES

10.1 Survival of Representations. All representations, warranties and covenants of WAIS contained in this Agreement will remain operative and in full force and effect, regardless of any investigation made by or on behalf of the parties to this Agreement, until the earlier of the termination of this Agreement in accordance with its terms or the Final Release Date (as defined

in the Escrow Agreement), whereupon such representations, warranties and covenants will expire; provided that the representations and warranties contained in the following Sections 2.8, 2.12, 2.14, 2.22, 2.23, and 2.24, to the extent the same apply to conditions existing on or before the Closing Date (the "~~Specific Representations~~"), shall remain operative and in full force and effect until the first anniversary of the Closing Date: (i) Section 2.8 (Taxes), to the extent such representation and warranty may apply to the knowledge of, or to the intentional, knowing or willful action or inaction of, WAIS and/or Mr. Kahle; (ii) Section 2.12 (Intellectual Property), to the extent such representation and warranty may apply (A) to the knowledge of, or to the intentional, knowing or willful action or inaction of, WAIS or Mr. Kahle, and/or (B) to any claim or potential claim of Thinking Machines Corporation and/or its trustees or administrators, successors or assigns ("TMC Claims"); and (iii) Section 2.14 (Certain Transactions and Agreements), to the extent such representation and warranty may apply to the knowledge of, or to the intentional, knowing or willful action or inaction of, WAIS and/or Mr. Kahle (collectively, the "Specific Representations"). AOL's and Sub's representations, warranties and covenants contained in this Agreement shall terminate as of the earlier of the termination of this Agreement in accordance with its terms or the Final Release Date.

10.2 Indemnity and Escrow Agreement. Subject to the limitations set forth in this Section 10, the WAIS Shareholders will indemnify and hold harmless AOL, Sub and its respective officers, directors, agents and employees, and each person, if any, who controls or may control AOL or Sub within the meaning of the Securities Act (hereinafter referred to individually as an "Indemnified Person" and collectively as "Indemnified Persons") from and against any and all losses, costs, damages, liabilities and expenses arising from claims, demands, actions, causes of actions, including, without limitation, reasonable legal fees, net of any recoveries under applicable insurance policies, or indemnities from third parties or tax benefits to AOL resulting from such damage and known to AOL at the time of making a claim under the Escrow (hereinafter referred to as "Damages") arising out of ~~(i)(a)~~ any misrepresentation or breach of or default in connection with any of the representations, warranties and covenants given or made by WAIS in this Agreement, the WAIS Schedules or any exhibit attached hereto or ~~(ii)(b)~~ any claim, demand, action, or cause of action brought within two (2) years after the Closing Date relating to any matter disclosed or required to be disclosed on Section 2.22 to the WAIS Schedules as required by Section 2.22.2(f) hereof (the "Section 2.22.2(f) Matters"); provided that the event underlying such claim, demand, action or cause of action occurred prior to the Closing Date. Notwithstanding anything in this Agreement to the contrary, (i) the Escrow Shares shall be AOL's and Sub's sole recourse for breaches of all representations, warranties, agreements and covenants made by WAIS and/or Mr. Kahle pursuant to this Agreement, other than the Specific Representations and the Section 2.22.2(f) Matters and (ii) the AOL Common Stock and Additional AOL Options issued or granted to Mr. Kahle, and any proceeds thereof, and the Escrow Shares shall be AOL's and Sub's sole recourse for breaches of the Specific Representations and for the Section 2.22.2(f) Matters. Notwithstanding the foregoing, ~~(x)(w)~~ upon the Final Release Date, Mr. Kahle's obligation to indemnify AOL for any claim relating to the Section 2.22.2(f) Matters that is not based on ~~willful or intentional,~~ knowing or willful action or inaction of WAIS and/or Mr. Kahle shall be limited to an amount not to exceed ~~one hundred~~ fifty percent ~~(100%)~~ (50%) of Three Hundred Twenty-eight ~~Forty-six~~

Thousand Dollars ~~(\$328,000)~~, ~~(y)~~(\$346,000), ~~(x)~~ Mr. Kahle's obligation to indemnify AOL with respect to any claim relating to Section 2.22.2(f) Matters shall be limited only to such claims arising under those Government Contracts entered into by WAIS prior to the Closing Date, ~~and~~ ~~(z) Mr. Kahle shall have no liability or obligation to indemnify AOL for Section 2.22.2(f) Matter claims to the extent such claims result from AOL's failure to~~(y) AOL shall use commercially reasonable efforts to mitigate liability to WAIS and/or Mr. Kahle resulting from WAIS's failure before the Closing to properly legend WAIS's software upon delivery to the U.S. Government and (z) with respect to any TMC Claim that is not based on intentional, knowing or willful action or inaction of WAIS and/or Mr. Kahle, AOL shall be responsible for the defense thereof (with the reasonable cooperation of WAIS and Mr. Kahle); provided that all legal fees and expenses in connection with such defense shall be included as Damages hereunder, and provided, further that AOL may not enter into any settlement of any TMC Claim indemnified by Mr. Kahle hereunder without the prior written consent of Mr. Kahle, such consent not to be unreasonably withheld or delayed. The indemnification provided for in this Section 10.2 shall not apply unless and until the aggregate Damages for which one or more Indemnified Persons seeks indemnification under this Section, exclusive of legal fees, exceeds \$25,000 (the "Basket"), in which event the indemnification shall include all Damages (including the Basket). AOL will use commercially reasonable efforts to obtain recoveries under all applicable insurance policies for all Damages.

11. MISCELLANEOUS

11.1 Governing Law. The internal laws of the State of California (irrespective of its choice of law principles) will govern the validity of this Agreement, the construction of its terms, and the interpretation and enforcement of the rights and duties of the parties hereto. Any litigation or other dispute resolution between the parties relating to this Agreement will take place in any court of competent jurisdiction.

11.2 Assignment; Binding Upon Successors and Assigns. Neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party hereto. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

11.3 Severability. If any provision of this Agreement, or the application thereof, is for any reason held to any extent to be invalid or unenforceable, the remainder of this Agreement and application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto.

11.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be an original as regards any party whose signature appears thereon and all of which together will constitute one and the same instrument. This Agreement will become binding when one or more counterparts hereof, individually or taken together, will bear the signatures of both parties reflected hereon as signatories. Facsimile copies of such counterparts are acceptable.

SCHEDULE 3.0

AOL SCHEDULE OF EXCEPTIONS

None.